

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

May 4, 2005

LB 737

state refuses to honor my claim by reissuing the check after a year, wouldn't I still have an action in unjust enrichment against the state of Nebraska? Because I provided a service for a bargained-for price; it's a valid debt of the state; the state denies my warrant because it expired under the terms of the warrant; however, I have not been paid. That seems to me to be actionable under the theory of the common law unjust enrichment, and I would still have time, under the statute of limitations that applies to contracts, I believe two years in the state of Nebraska. So if we're going to be consistent, let's make sure that it follows the statute of limitations for a contract civil claim in the state of Nebraska, because I could still sue the state, and I think that's important to note, if you want to get down to the brass tacks. Let's assume for a second that we're talking about a disputed claim. If I have a dispute with the state of Nebraska and I have two years to file my claim, if I cash that check, under the Uniform Commercial Code, Section 3-311, that is accord and satisfaction. If I sign the back of the check, I cash it at my bank, that essential...and let's say, for instance, you know, the state is paying me for the claim that I had submitted, I now say it's different, whatever the facts may be, I have essentially foreclosed any opportunity to pursue any action against the state of Nebraska because, under the Uniform Commercial Code, I have essentially said I have been paid everything that has been in dispute. Now, that assumes facts that I haven't already discussed. But I think that we should tread lightly on denying state warrants or denying these claims. I think it should be difficult for somebody that's negligent in cashing it and essentially going through the Legislature on LB 737 would seem to be a fairly difficult route to wait for the state of Nebraska to approve my claim. I think that's reasonable. But let's not open ourselves up to...

SENATOR CUDABACK: One minute.

SENATOR FLOOD: ...a claim of unjust enrichment or involve ourselves in a situation where we're making decisions on a year that the Uniform Commercial Code may decide differently with our statute of limitations in civil court. It seems to be very confusing. This is also a confusing route that we're going but,